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Crime prevention and criminal justice

Letter dated 18 October 2001 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the Final Declaration of the Global Forum on Fighting Corruption and Safeguarding Integrity II, held in The Hague, Netherlands from 28 to 31 May 2001 (see annex I),* as well as the reports of the workshops (see annex II).*

I should be grateful if you would have the present letter and its annexes distributed as a document of the General Assembly, under agenda items 96 (a) and 110.

(*Signed*) Dirk Jan **van den Berg**
Ambassador
Permanent Representative

* The annexes are being issued in the languages of submission only.

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Annex I to the letter dated 18 October 2001 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

[Original: English, French and Spanish]

GLOBAL FORUM ON
fighting corruption AND
safeguarding integrity II

FINAL DECLARATION

THE HAGUE, 31 MAY 2001
THE NETHERLANDS

GLOBAL FORUM ON FIGHTING CORRUPTION AND SAFEGUARDING INTEGRITY II (THE HAGUE, 28 – 31 MAY 2001)

FINAL DECLARATION

DEFEATING CORRUPTION THROUGH INTEGRITY, TRANSPARENCY AND ACCOUNTABILITY

We, Ministers and government representatives, have met in The Hague at the Global Forum II on 31 May 2001 with the aim of preventing and combating corruption and promoting integrity in government and in society.

We are all deeply concerned about the spread of corruption, which is a virus capable of crippling government, discrediting public institutions and private corporations and having a devastating impact on the human rights of populations, and thus undermining society and its development, affecting in particular the poor.

We are determined to prevent and combat all forms of corruption.

We are convinced that examples should be set: by governments in ensuring the integrity of their officials; by political parties in promoting transparency in their financing; and by the private sector in applying high standards of accountability.

We are convinced that safeguarding integrity is not only a matter of enacting correct laws and establishing an independent, effective and efficient judiciary committed to upholding the rule of law, but may also require in some cases changes in attitude and in long-standing practices.

We are aware that corruption cannot prosper in the full light of openness. Transparency and impartial forms of public control as well as co-operation by the private sector are of the utmost importance. Independent and investigative media have a vital role to play.

We recognise our responsibility to adopt policies aimed at reducing or eradicating corrupt practices at the national and international level.

We welcome the United Nations General Assembly's decision to begin the elaboration of an effective international legal instrument against corruption. This instrument will support our national efforts against corruption and strengthen our ability to co-operate in the fight against corruption at the international level.

We have adopted the following report of the deliberations at the Global Forum II:

General issues

1. For four days participants at the Global Forum on Fighting Corruption and Safeguarding Integrity II have explored the best ways of realising their commonly held objectives, *i.e.* putting an end to corruptive practices and further developing systems based on good governance and integrity. Participants included Ministers of a number of different Departments and senior officials as well as representatives of other state bodies, representing 142 countries. A number of intergovernmental and non-governmental organisations were also present.

2. In their search for common solutions, participants greatly benefited from the results of the Global Forum I, hosted by the United States of America and held in Washington DC on 24-26 February 1999. The "Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials" proved to be a source of inspiration. Participants have also taken note with interest of the results reached during the regional preparatory conferences of Central and East European Countries on Fighting Corruption, held in Bucharest on 30-31 March 2000 and on 29-30 March 2001, the meeting of the Legal Sector of the Southern African Development Community held in Lusaka on 28 July 2000 and the Conference of ECOWAS Ministers of Justice on "Collaborating against Corruption" held in Accra on 21-22 May 2001 as well as of the work of the tenth session of the United Nations Commission on Crime Prevention and Criminal Justice held in Vienna from 8-17 May 2001.

3. Participants have not attempted to prescribe specific solutions to corruption, but envisage offering one another guidance and assistance in developing effective and appropriate national and international means to best achieve specific public integrity ends, respecting the national sovereignty of every country.

4. The multi disciplinary approach of Global Forum II was welcomed by participants: it reflects the many-faceted nature of corruption as a dangerous phenomenon and therefore the need for involvement of society at large.

Workshops

5. Participants have taken note of the chairpersons' reports on each of the five workshops, *i.e.* on Integrity and Governance, on Law Enforcement, on Customs, on Corruption, Transition and Development and on Government and the Business Sector, as summarised by them in paragraphs 6, 7, 8, 9 and 10. The reports, as annexed for information to this Declaration, offer valuable contributions to the study and exchange of 'best practices' in the fight against corruption and safeguarding of integrity.

6. The chairperson of the workshop on Governance and Integrity summarised the discussions held under his guidance as follows. Integrity in administration is crucial to the achievement of good governance and demands the continuing commitment of leadership at the political and at all official levels. It is considered important that Governments adopt and sustain integrated programmes to promote integrity in public administration. Raising confidence in anti-corruption measures can be achieved by involving citizens, business and the independent media in their formulation and implementation. A legal framework is necessary to obtain the rule of law in administrations, in order to guarantee disclosure and transparency and also to prescribe the conditions for political financing. The establishment of independent bodies to

oversee, to control and to enforce the integrity of public administration and to ensure the systematic reporting and auditing of political funds should be considered.

7. The chairperson of the workshop on Law Enforcement summarised the discussions held under his guidance as follows. Law enforcement institutions are crucial for the struggle against public and private corruption; at the same time the integrity of these institutions is essential for the credibility of that struggle. International instruments such as a United Nations Convention against corruption are important for bridging the gaps between national legal systems, particularly if existing frameworks and experience are taken into account. An international system for returning the funds derived from corruption is important. Technical support is needed to help countries enact legislation and build institutions. No national integrity system is applicable in all countries, but the success of institutions always depends upon the political support and the availability of sufficient resources. Important elements of national and international law enforcement strategies are the combination of adequate criminalization, sufficient powers of investigation, special police units, an independent judiciary and the availability of instruments like selective integrity testing. More national and international research and monitoring on the effectiveness of those strategies and methods are needed.

8. The chairperson of the workshop on Customs summarised the discussions held under his guidance as follows. Due to the strategic role Customs plays in trade and its facilitation, as well as in the collection of government revenue and community protection, participants commit themselves to supporting Customs in its fight against corruption. They acknowledge the fact that national Customs Administrations are taking positive steps to deal with the issue, but that additional government commitment and investment are required to implement comprehensive integrity measures. In this respect, the participants recognise the shared responsibility between Customs and the private sector in addressing the issue of corruption. Therefore they urge the World Customs Organisation, regional Customs organisations, national Customs Administrations and the private sector to consider in their future work the various conclusions drawn by the Customs Workshop.

9. The chairperson of the workshop on Corruption, Transition and Development summarised the discussions held under her guidance as follows. Poverty reduction strategies will never be effective when corruption is rampant. Therefore fighting corruption is crucial for reaching development objectives. Anti-corruption efforts must always be an integral part of promoting good governance, including a sound financial system. The opportunities for diminishing corruption were highlighted. A legislative framework to prevent and combat corruption is an essential condition, but implementation capacity and funds are also needed. Fighting corruption requires co-operation and commitment at all levels, from global to local, and at all levels of government and from non-governmental organisations. In addition, non-governmental organisations were invited to be more transparent about their goals, results and about their sources of income and expenditure. Public authorities, civil society and the private sector should complement and reinforce one another in making public resource flows more transparent and making data available and trustworthy. Raising awareness of the negative impact of corruption is an important contribution, in which the press can play a major role. Educating youth to make them more aware enables their future involvement.

10. The chairperson of the workshop on Government and the Business sector summarised the discussions held under his guidance as follows. The importance was stressed of support by Governments for voluntary codes of conduct, anti-bribery compliance programs by individual

companies, including measures to enable the reporting of corruption. The importance of an appropriate legal framework for proper accounting and auditing standards was also stressed. It was further considered of great importance, since corruption is greatly facilitated by money laundering, to have legislation providing for effective preventive measures to be applied to financial institutions and other intermediaries, including making bribery a predicate offence for money laundering. Effective international co-operation, including with offshore centres, resulting in the return of funds derived from corruption to the country of origin, is considered crucial in combating corruption.

Transparency, integrity policies and other preventive measures

11. The highest possible degree of transparency in all aspects of government is essential to promote integrity and to fight corruption. The media, civil society and the private sector are indispensable partners for government in this endeavour. Governments should adopt, widely publicise and enforce legislation and procedures that provide the public and the media in the best possible way an optimum degree of access to information relevant to fighting corruption.

12. It is evident that national parliaments and local administrations have an important role to play in ensuring high standards of integrity. Financing election activities and political parties should be transparent so as to prevent corruption.

13. Government organisation and procedures should be designed in a manner that reduces opportunities for corruption and creates incentives for public integrity. This could be stimulated through the establishment of a comprehensive public sector integrity policy that envisages the management of public services through a merit-based, professional and impartial civil service, with appropriate recruitment and retention systems and codes of conduct governing ethical behaviour. Further measures that effectively promote integrity and prevent corruption among public officials can be strategically selected from a broad array of integrity practices.

14. Parallel to the foregoing, the adoption of a private sector integrity policy is necessary. This policy should envisage, in particular, effective measures that discourage the misuse of legal persons for purposes of corruption and related offences. In this respect participants consider appropriate the further exploration of the ability of governments to exclude legal persons convicted of corruption offences from entitlement to public benefits or aid, and the ability to identify persons convicted of corruption offences and disqualify them from acting as directors of legal persons.

15. Finally, participants endorse efforts to create a supportive and safe environment for citizens, civil servants and employees who report corrupt practices, and to establish, where appropriate, reliable and impartial institutions to handle these reports.

Criminal law and enforcement

16. Participants stress the need for including in national criminal law clear definitions of conduct that is to be considered to constitute corruption offences, as well as a precise description of a public official. They expect the comprehensive report of the Secretary General of the United Nations on "Existing international legal instruments, recommendations and other documents addressing corruption" (E/CN.15/2001/3) to be an inspiration for national legislators and others.

17. Furthermore participants deem it essential to provide for a broad scope of corruption offences in national legislation, including, as necessary, foreign and international corruption.

18. Participants recognise the need for governments to make available adequate resources for investigation and prosecution of corruption offences as well as for international co-operation in corruption cases.

Assistance and co-operation

19. Participants are convinced that rendering one another assistance through the exchange of their experiences and 'best practices' will improve the effectiveness of anti-corruption strategies, both national and international. Participants also note the importance of support to civil society organisations in their fight against corruption.

20. Participants commend the quality of the surveys made available by the United Nations Centre for International Crime Prevention in Vienna within the framework of the Global Programme against Corruption.

21. Participants consider improvement of law enforcement co-operation and mutual legal assistance necessary. Possible avenues are intensifying existing exchange of operational information and rendering technical and other types of assistance, identifying lacunae and developing new methods and techniques. Where necessary, creating an adequate legal basis for new activities should be considered. Consideration could be given also to ways and means to facilitate the matching of requests for and offers of expertise.

22. They are deeply conscious of the need to improve co-operation relating to the returning of funds derived from acts of corruption. They welcome the relevant recommendations forwarded by the United Nations Commission on Crime Prevention and Criminal Justice at its Tenth Session, held in Vienna from 8-17 May 2001.

Monitoring

23. Participants recognise the importance of monitoring mechanisms. They pay tribute to the efforts undertaken in the context of the OECD, the Council of Europe/GRECO, the European Union, the Baltic Sea States' Task Force on Organised Crime, and the Stability Pact Anti-Corruption Initiative. The value of other regional, sub-regional or national mechanisms is recognised. States of the regions concerned, which do not yet participate in such mechanisms, are invited to consider joining these.

24. Participants welcome the announcements made by the Pan African Ministers of Civil Service and the Global Coalition for Africa concerning the development of an additional monitoring mechanism and by the World Customs Organisation concerning the development of a peer review and monitoring process. Participants also welcome the information that the States Parties to the Inter-American Convention against Corruption plan shortly to approve a follow-up mechanism to analyse their progress in implementing that Convention.

25. Furthermore, participants take note with appreciation of the initiative of Romania, Lithuania and Poland mutually to evaluate the effectiveness of their anti-corruption strategies.

26. Further improvement could be reached when the secretariats of the existing monitoring mechanisms would seek more ways for effective co-operation.

The way forward

27. Global Forum II welcomes the initiative of the Republic of Korea to host Global Forum III in 2003, which will provide continuity to the exchange of views world-wide, based on the principle of the equality of States.

28. Global Forum II emphasises the importance of the decision taken by the General Assembly of the United Nations, embodied in Resolution 55/61 of 4 December 2000, to start the elaboration of an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organised Crime. Global Forum II invites participants in these negotiations to take into account the results of the Global Forum process.

29. Global Forum II reiterates the need for involvement of civil society, the private sector and the media in developing and implementing effective national and international anti-corruption strategies. It recognises the unique nature of the International Anti-Corruption Conference (IACC), which brings together individuals from all segments of society. The Xth IACC, to be held in Prague, in October 2001, will provide an opportunity for civil society, the private sector and government officials to develop a wider set of recommendations for action. The XIth IACC will be held in the Republic of Korea in 2003.

Annex II to the letter dated 18 October 2001 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

[Original: English]

Annex to the Final Declaration Global Forum on Fighting Corruption and Safeguarding Integrity II

Reports of the workshops

THE HAGUE,
MAY 31, 2001

Workshop I	**Integrity and governance**	11
Workshop II	**Law enforcement**	17
Workshop III	**Customs**	21
Workshop IV	**Corruption, transition and development**	29
Workshop V	**Government and the business sector**	33

REPORT

WORKSHOP 1

'INTEGRITY AND GOVERNANCE'

THE HAGUE,
MAY 31, 2001

- **The recommendations in the texts are the reflections that were expressed by the experts during the workshops. They have no formal status.**

Workshop I: Integrity and governance

Sub-session 1: Political Financing and Integrity

Guiding principles:

- Because of all the different political systems and political and cultural backgrounds there is no perfect system/set of rules for political financing;
- In order to promote integrity each system of political finance should strive for a high degree of transparency and disclosure (although this may not lead to major harassment to donors to opposition parties). Regulation of political financing with minimum standards for transparency is needed. This legislation should be clear and general;
- There should be no public financing without 'strings attached' (i.e. specific obligations of the recipient parties and/or candidates to be stipulated by law). Such stipulations should include at least public accountability of political parties and/or candidates.

Discussion existed among the participants about the need for an incentive which ties the amount of public subsidies to the success of grassroots-financing in terms of fundraising efforts among the general public (matching funds, partial reimbursement of specified expenses, tax credits, etc.).

Minimum standards for transparency are:

- All donations, including foreign donations, to political parties or candidates above a certain minimum should be made public within an short span of time;
- A variety of financing resources of political parties is necessary. No regulation of political finance should contribute to a process whereby a non transparent system of private funding is completely replaced by an unlimited and uncontrolled system of public subsidies.

Good practices are:

- The introduction of a system of public subsidies must be very well prepared, since it is difficult to repair any malfunctioning system once it has been put into practice. No system of public subsidies should be put into place that has no internal checks and balances (including an independent enforcing agency);
- In order to do justice to the principle of equality of chances, systems of public subvention to political parties and/or candidates should be a mix of an amount of public subsidy related to the number of votes (not parliamentary seats) and an amount of public subsidy to match small donations by individuals and/or membership fees. Additional public money to parties in opposition is compatible with this principle of a level playing field;
- An independent enforcing agency that ensures the systematic reporting and auditing of political funds. It guarantees the public access to records and organises publicity on the topic of political finance. That independent agency must be backed by legal sanctions.

Other suggestions:

- The training of young scholars and policy-makers in developing countries in the field of political financing;
- International aid to promote the training of members and officials of election commissions concerning enforcement techniques;
- Promotion of empirical comparative research.

Recommendations

- Legislation that prescribes a high degree of disclosure and transparency in political finance;
- The existence of an independent enforcing agency;
- The training of young scholars and policy-makers in all countries in the field of political finance.

Sub-session 2: Integrity and the Police

The focus of this workshop was upon efforts to establish and maintain police forces characterised by high levels of integrity and low levels of corruption and misconduct. Six presentations covered experiences in Poland, Hungary, South Africa and Northern Ireland - all states currently undergoing significant transformation. Although there are particular problems associated with the democratisation of policing is such societies, it is clear that all societies may be considered, in one sense, as being in transition. Consequently, issues of police integrity and legitimacy are of concern To all as the integrity of the police and the integrity of the state are closely linked.

Two fundamental observations underpinned the discussions. First, it was argued and accepted that misconduct and corruption by police officers are *pervasive* (found in all jurisdictions), *continuing* (likely to be found at all times) and not bounded by rank. Second, it was agreed that effective policing is based on public confidence and trust. Maintaining such trust is dependent on full and effective action against misconduct. Of central concern for the workshop was the issue of what form efforts to tackle corruption and misconduct should take. Examples from the workshop indicated, either through relative absence (Poland, Hungary), or presence (South Africa, Northern Ireland), that some form of *independent, external* oversight of the police is vital (particularly in societies where trust in police is especially low). Such external review is important for two reasons. First, it can provide an environment in which investigation can take place free from professional and political influence. Second, it has a vital symbolic role in fostering public trust in the police. Different models of external oversight were discussed, the most radical model of which was that now existing in Northern Ireland. There a newly established office of Police Ombudsman has powers to investigate all complaints made to police, supported in law and made possible by a very high level of financial support. An effective system of scrutiny needs such financial support in order to be able to respond quickly and comprehensively to complaints.

The workshop explored the sources of police misconduct and corruption, and considered the socio-political and legal environment, human rights and organisational issues. Included within this were such matters as the legal basis for investigating misconduct, the nature and extent of human rights and ethics training, and such organisational issues as recruitment, selection and police pay and conditions of work. Poor pay and conditions were held to be an important factor, particularly where police officers are paid salaries below the poverty line. However, it was generally agreed that much or even more could be achieved by careful selection and recruitment procedures, and through ongoing training, to instil professional values, and to develop skills which protect against misconduct. Thus, in addition to strong, independent, *retrospective* scrutiny, it was agreed that considerable responsibility must remain with the police organisation for *proactive* action against misconduct. Police leadership, it was accepted, must also be at the core of tackling corruption. Creating the right environment to prevent misconduct is a core management responsibility for the police. There are concerns , though there is no evidence as yet from Northern Ireland, that removing the entire responsibility for investigating complaints from the police might lead to abrogation of responsibility by senior police managers for tackling misconduct and corruption

The contributors to the workshop talked of the importance of establishing a complementary or symbiotic relationship between proactive prevention by the police organisation, and internal and external means of investigation and oversight. There is clearly no single model for fostering integrity and tackling misconduct and corruption in policing. The challenge is to find a balance between 'internal' and 'external' means that are appropriate to the political and cultural environment in which they have to operate.

Recommendations

- States should consider establishing external means of investigation of complaints against the police, that are appropriate to the political and cultural environment in which they have to operate.

- External investigatory bodies should be independent of the police and those who are politically responsible for them. They should be impartial and well-resourced, and should report publicly on the volume and outcome of complaints/investigations.

- All police services should ensure that the need to maintain the highest standards of professional conduct is a central consideration in their recruitment, selection, training processes and in their management structures and procedures.

Sub-session 3: Integrity and Public Administration

Programmes to safeguard integrity of public officials have focused on two broad approaches: a compliance-based approach and a values-based approach. The compliance approach focuses primarily on regulation, inspection, sanction, and conformity to prescribed standards - the moral minimum. The emphasis is on what officials should *not* do. The values-based approach is concerned with inculcating rules, principles and values through ethics education and by cultivating the officials' capacity for ethical judgement – the moral maximum. This approach relies on the moral capacity of officials and focuses on the notion of responsibility. Both approaches are to be found in most jurisdictions with the crucial question being about the weighting and the balance of the two approaches. An integrated approach combines both orientations: to prevent corruption and to promote integrity the desirable way forward is to balance control systems with policies to nurture responsibility within the official culture, with a focus on rules whenever necessary and a focus on values, guidance and dialogue wherever and whenever possible.

During the sub-session the City of Amsterdam presented an instructive case study of its integrity project 'Correct or Corrupt'. The sub-session was also introduced to a number of instruments that might assist public organisations in the promotion of integrity in public administration, viz. a multimedia programme focused on encouraging officials to discuss moral choices; an instrument for screening the personal integrity of new staff; an instrument for measuring integrity in an organisation's culture and a board-game for making officials more aware of moral dilemmas.

The introduction and maintenance of programmes for ethical management is not costless. The direct 'upfront' cost to the taxpayer must, however, be weighed against the large benefits to the community that accrue from successful programmes for preventing corruption and promoting integrity.

Recommendations

The sub-session recommends:

- that integrity in administration is crucial to the achievement of good governance and demands the continuing commitment of leadership at political and all official levels;
- that governments adopt and sustain integrated programmes to promote integrity in public administration combining:
  a. enhanced management practice from an integrity perspective (including codes of conduct, increased transparency, oversight of administrative discretion); and
  b. increased attention from an integrity perspective to the appointment and management of public officials (including selection processes, performance management, and remuneration systems);

- it is important to pay attention to the specific political and social dynamics of developing countries, including small or micro states. We suggest a monitoring centre where small countries can share their experience and their best practises.

Sub-session 4: Transparency and Integrity in Government

We had a productive and stimulating session with delegates from all continents and a forum of four experts. Bience Gawanas (Namibia Public Prosecutor) stressed the importance of lifting the veil on secrecy, and of combating ignorance of the functioning of government and the silence born of fear of victimisation. Mick Andersen told of his experiences as an officially honoured whistleblower and stressed that organisations must focus on the message and not on the messenger. In his role as an international journalist he described the role whistleblowers play in providing stories. Abha Joshi (a human rights lawyer) made clear that information is essential to combat poverty and explained how transparency helps to deter financial misconduct in government and to protect public health and the environment. Maurice Frankel (an expert on transparency) made clear that corruption is not a question of cultural determination by giving examples of corruption in western countries. He demonstrated that the right to public information does not weaken government but builds trust between government and the people. Mark Bovens (professor of Utrecht University) led interactive case studies on an opinionated civil servant, a critical general, a corrupt Vice-President in an international agency and a whistleblower who discloses information to Parliament after having exhausted internal channels. These cases showed the dilemmas that civil servants can face and delegates' votes on the appropriate courses of action have informed these recommendations:

Recommendations

- Freedom of information
  Provide the public with information and with a legal right of access to information. Give reasons for official decisions and restrict access to information only when the wider public interest clearly demands;

- Whistleblowing
  Protect and promote integrity by providing safe alternatives to silence inside and outside every organisation for staff to raise genuine and reasonable suspicions about corruption and misconduct;

- Independent oversight
  Provide access to bodies (whether ombudsmen or the courts) to oversee and enforce rights on freedom of information and whistleblowing. Public authorities should also recognise the contribution of a free media, an independent judiciary, civil society and the public generally in deterring and detecting misconduct and corruption.

Sub-session 5: Democracy and Integrity

Conclusions

- Democracy provides a supportive environment for exposing and countering corruption.
- Integrity is a prerequisite for the survival of democracy.
- The breakdown of shared civic values which favour integrity is conducive to corruption.
- Shared civic values can be expressed through democratic action.
- Shared civic values emerge from a responsible and accountable civil society, e.g. educational institutions, professional associations, NGO's, the media etc.
- Universal principles in support of integrity should be applied both in the public and private sectors within the social, economic and context of the individual country.

Recommendations

- Democratically elected leaders should uphold integrity through personal example and by creating legislative and institutional arrangement that promote ethical behaviour and condemn corruption.
- Anti-corruption programmes should impact both on the briber, the bribed and consider the victims of corruption.
- Confidence in anti-corruption measures should be raised by involving citizens, businesses and the independent media in their formulation and implementation.

REPORT

WORKSHOP 2

'LAW ENFORCEMENT'

THE HAGUE,
MAY 31, 2001

- The recommendations in the texts are the reflections that were expressed by the experts during the workshops. They have no formal status.

Workshop II: Law Enforcement

Introductory remarks

- Any anti-corruption strategy depends on the willingness of the political leadership to take corruption problems seriously, to make anti-corruption policy a priority and to assign sufficient resources to the relevant institutions.

- The relationship between corruption and law enforcement is a challenging one; on the one hand law enforcement institutions are crucial for the struggle against corruption; on the other hand, the integrity and perceived integrity of these institutions is essential for the credibility of that struggle.

International co-operation

- International instruments are important for bridging the gaps between national (legal) systems. They create the conditions for improving co-operation between national law enforcement institutions. Their importance is nowadays increasing because of the internationalisation of corruption problems. This development stimulates the integration of police co-operation and mutual legal assistance.

- A new UN Convention against corruption can become an useful instrument for the struggle against corruption if it succeeds in complementing existing instruments like the UN Convention Against Transnational Organised Crime, if it takes into account the difficulties experienced with investigations in the past (e.g. bank secrecy should no longer be a ground for refusal to reply to requests for mutual assistance and provisions on the return of the proceeds of corruption should be included), and if it urges the requesting and requested Parties to play an active role in investigations.

- An important issue with respect to a new Convention is the support for countries in order to enact legislation and build up the institutions and the expertise needed for its implementation and enforcement.

- In conjunction with existing and new instruments, there is a need for leadership in organising the use of these instruments at an international level in specific cases. Interpol and regional institutions like Europol could function as linking organisations in international investigations.

- To further international co-operation the exchange of investigators among anti-corruption entities could be stimulated.

- A next step could be the establishment of multinational investigative anti-corruption units at a regional level. Along with other innovative measures, such an initiative must be embedded in regional agreements.

- There is a need for active promotion of speedy exchange of information between states concerning their anti-corruption efforts.

National integrity systems

- The international and national struggle against corruption is dependent on the quality of the national integrity system of countries (the rules, laws, organisations to curb corruption and safeguard integrity). The system should contain institutions for information, for prevention and advice and for investigation and prosecution.

- There is no system that is applicable in all countries because its effectiveness is related to the societal (political, economic, cultural and social) circumstances within which it has to function. Multinational institutions should have an open eye for these circumstances when giving advice to governments on the containment of corruption.

- The success of any anti-corruption system depends upon the availability of sufficient resources. This condition covers budget and personnel as well as legal powers and public support. On conjunction with this the publication of corruption of corruption-cases might be very helpful.

- An anti-corruption system should be capable of handling so-called big cases but should also deal with the corruption problems with which ordinary citizens are confronted.

- The establishment of independent institutions can contribute to curbing corruption. It will depend on the circumstances which type of institution is most suitable.

- Protecting integrity in society is also the responsibility of the private sector. Undertakings should enhance corporate governance and install compliance systems. External accountants should be obliged to report cases of corruption to public authorities.

- The notion of civil society certainly is of great importance in this context. It is however necessary to define and to clarify this concept in order to make the relationship between governmental bodies and social institutions more effective from an operational point of view.

Law and law enforcement

- Police forces, prosecution services and courts are mutually dependent in realizing an effective anti-corruption strategy. At the same time they should cooperate with regulatory bodies, administrative authorities, customs et cetera. Corruption problems are often too complicated to be solved by the law enforcement system alone.

- The criminalisation of corruption in the public and private domain at the national level should be as much as possible consistent with the developing international standards. The same should apply to the powers of investigation. In addition to credible penal sanctions, disciplinary, administrative and civil law sanctions might equally be very effective.

- Among the powers of investigation to be considered in serious cases are electronic surveillance and undercover operations. It is important to be aware of the risks of corruption in connection with the use of such intrusive powers, however.

- Whistle blowing can be of great help when it is part of a comprehensive strategy against corruption. The protection of the whistle blower needs to be carefully designed.

- In order to investigate serious cases of corruption special police units are usually required. The success of these units depends not only upon powers and resources but also on their capability to define targets and priorities within the framework of a governmental antic-corruption policy. A close working relationship between such units and the prosecution service is a conditio sine qua non.

- An independent judiciary is an absolute requirement for any effective and legitimate anti-corruption strategy. Its independence should be enshrined in the Constitution as well as safeguarded in the working conditions of the judges. The judiciary has the responsibility to create an internal control system that guarantees its integrity.

- In order to prevent investigations into corruption from being abused as an instrument of power politics, measures should be taken to avoid any political interference in the handling of individual cases.

- To raise awareness on the risks of corruption the issue of integrity should be included in the training for public officers.

- Selective integrity testing can be an effective instrument to check rumours and indications of a serious corruption problem.

Assessment of anti-corruption policies

- More research on the effectiveness of anti-corruption strategies and instruments at the national level is needed. This presupposes research on the nature, the extent and the impact of corruption.

- International comparative research can increase our knowledge of the role significant elements of national integrity systems play in the containment of corruption problems in widely diverging societal circumstances.

- Monitoring systems are necessary to evaluate the extent to which the law enforcement systems of countries meet their obligations under international law.

Global Forum on
fighting corruption and
safeguarding integrity

REPORT

WORKSHOP 3

'CUSTOMS'

THE HAGUE,
MAY 31, 2001

- The recommendations in the texts are the reflections that were expressed by the experts during the workshops. They have no formal status.

Workshop III: Customs

Participants were pleased to have an opportunity to contribute to such an event, whose basis is a fundamental dedication to promoting dignity, integrity, mutual respect, and fair competition. This occasion also allowed us to undertake careful analysis of a topic that has long occupied the attention of the international customs community.

Some 93 countries and 7 international organisations took part in the Customs expert workshop of the Second Global Forum. The Customs workshop convened on May 28, and concluded its work on May 30, 2001. It consisted of three plenary meetings and two concurrent sessions created to examine specific areas, including anti-corruption efforts at the national and international level.

The World Customs Organisation (WCO) has been a leader in the fight against corruption, having placed the issue of integrity on its agenda over a decade ago. The 1993 Arusha Declaration further defined these integrity principles. The WCO has developed a variety of tools and approaches to assist member administrations in taking practical steps to build integrity and combat corruption.

The international customs community and WCO have already made a tremendous contribution to the Global Forum. Collective vision, common purpose, and co-operation have always been the guiding stars that made the WCO what it is today and successful collaboration between national administrations possible. We have created a unique culture of mutual respect, dignity, and co-operation among customs administrations of over 150 countries.

The Customs workshop sought to review progress, identify new challenges, and exchange experience. Throughout the session, five key themes were identified on which deliberations focused: (1) that Customs is a microcosm of society; (2) that integrity is a shared issue for both the public and private sector; (3) that Customs recognises the problem and is taking steps to manage the issue at the national and international level; (4) that there is a need to ensure that solutions promoting integrity within Customs are compatible with prevailing culture, socio-economic, and political circumstances; (5) that Customs can offer some positive lessons for other areas of public administration.

The first theme was that Customs is a microcosm of society: a smaller, similar version of society as a whole. Customs' role in society – the collector of revenue and the primary border protection agency – makes it vulnerable to transnational criminality. However, it is uncommon to see corruption in Customs and not in other sectors of society.

One factor to consider is that organised crime increasingly targets customs officers and operations as a vehicle for carrying out its illegal activity. The international customs community recognises the threat that organised crime poses at the national and international level and commits itself to take the strongest possible measures to counter this emerging challenge to customs integrity.

Another factor is their strategic and highly visible role in world trade and tourism. Customs is responsible for managing substantial flows of goods and people on a daily basis. Our actions in relation to these people will affect our countries as a whole. Another factor is that customs administrations are also responsible for overseeing a wide range of complex government regulations. Many unethical people try to bypass these regulations and taxes in order to save either themselves or someone else time and money.

Customs also has an unavoidably close working relationship with the trade community. In order to discharge its function effectively, Customs has within its purview a wide array of discretionary powers. The combination of these factors makes the problem of solving corruption difficult. Also, customs officers – those on whom the country relies to manage collection and enforcement functions – often have extremely low salaries compared to what people are able to acquire through illegal activities. Lastly, customs administrations are vulnerable because of their frequent need to work in highly decentralised locations such as

cargo sheds, remote border posts, and seaports, all of which make direct supervision and accountability difficult to maintain. Customs administrations are therefore particularly vulnerable to corruption.

Participants recognised that corruption does not exist in only one part of the world. We have come to realise that corruption exists everywhere, in developed as well as developing countries, in both public and private sectors. Corruption knows no borders and recognises no social, economic or cultural distinctions. It has invaded every aspect of life, not just Customs, and each of us must fight against it as long and as hard, and in as many ways, as possible. Key to such efforts are education and the creation of "integrity coalitions", which respectively impart values and mobilise relevant actors to counter societal forces that, left unchecked, would foster an environment in which corruption would thrive.

A number of country presentations made clear this recognition. In fact, every action taken by a customs administration to address integrity is grounded in a realisation that no organisation is immune and that positive, proactive steps are required to prevent corruption from gaining a foothold.

Related to the recognition of the pervasive nature of corruption, **the second theme** put forward during the Customs workshop was the idea that integrity is a shared issue for both the public and private sector. The majority of corrupt practices between the international trade community and Customs occur in the context of a border transaction. These transactions inherently involve two parties and both sides need to collaborate and search for solutions to corruption in the global trade arena. This is particularly important given the increasing volume and complexity of trade transactions.

Because both sides are recognised as parties to the problem, each must equally be part of the solution. Customs administrations recognise and applaud the efforts of those traders who are prepared to allocate significant resources to ensure compliance – such initiatives should be promoted and encouraged. Nevertheless, some traders are willing to participate in corrupt practices because of the short-term benefits they receive, even though they know that corruption is ultimately detrimental to everyone involved. Only a partnership can produce real solutions that address the problem.

In light of these observations, we recommend that every government ensure optimal co-operation between anti-corruption agencies. In addition, Customs and the private sector should establish mechanisms to examine the problem of corrupt practices on both sides and develop practical, sustainable solutions. We also recommend that the WCO continue to work with the International Chamber of Commerce (ICC) and other private sector organisations to establish leadership in this area and to identify further opportunities for Customs and trade community co-operation. The development and maintenance of a sound, co-operative relationship between customs administrations and the private sector is a necessary element of any national anti-corruption strategy. However, there was a cautionary note about avoiding "state capture", or having external actors influence Customs in a way that could compromise, or be perceived as compromising, its ability to perform its mission impartially and objectively.

The third theme discussed was that Customs recognises the necessity for integrity and the negative effects of corruption, and is taking steps to manage the issue at the national, regional and international level. While we acknowledge that Customs is a reflection of society and that corruption is a shared problem, the customs community recognises its responsibility to devise effective anti-corruption mechanisms. Instrumental in resolving these difficulties is a dedication to internal reform. Customs began examining this issue some time ago and has already undertaken significant actions to enhance integrity within individual administrations. These initiatives have provided a well-developed framework for an effective international anti-corruption strategy within Customs. National administrations now need support from their respective governments, the business community, and civil society in order to implement the major elements of this framework. Also critical in this is the vital role these actors play in ensuring translation of principles into concrete, measurable actions.

Although the WCO has provided high level anti-corruption strategies, work has not been restricted to the international level. Realistic steps have also been taken elsewhere. Customs administrations have created regional action plans and are sharing experiences. Looking back to country presentations, we saw several best practices, which will be available as an appendix to the written report of the Customs workshop. Examples were also shared from the Asia-Pacific Economic Co-operation (APEC) forum; the Commonwealth of Independent States (CIS); the Caribbean, through the Caribbean Customs Law Enforcement Council (CCLEC); and South Pacific, through the Oceania Customs Organisation (OCO). However, there is still a need for continued attention and increased support to provide customs administrations with the resources necessary to implement integrity programs that attack the systemic causes of corruption.

The fourth theme addressed the need to ensure that solutions and mechanisms for promoting integrity within customs services are compatible with existing legislative authorities, and cultural, socio-economic, and political circumstances. These solutions need to be periodically reviewed to ensure they remain relevant to changing conditions in the society in which they operate. The Customs community has a demonstrated commitment to eliminating all forms of corruption. But, by finding solutions compatible to a specific area, we are acknowledging that there are various underlying causes of corruption. The strategies that are selected must, therefore, deal with these causes.

Some participants noted that a developed country's "practical" solution for dealing with integrity may be unrealistic for a developing one. Countries can be at completely different starting points. One size does not fit all. The Arusha Declaration is clear about what is required, yet is not prescriptive in its calling for customs administrations to develop and implement appropriate solutions.

This conclusion is also central to the proposed process for Integrity Self-Assessment, Sharing of Best Practices and Peer Review and Monitoring of integrity standards, which the WCO unveiled during this Forum. This scheme is based on the 12 elements of the Arusha Declaration. It involves Member customs administrations agreeing to participate in a voluntary system of self and mutual assessment against a series of minimum standards or recommendations derived from the Arusha elements. This process is designed to identify and share what works rather than uncover cases of non-compliance, and could include benchmarking against best practices. Finally, it will include a reasonable period of time in which participating customs services can work to implement solutions that meet the minimum standards.

In light of these conclusions and observations, we recommend that the Global Forum note the proposed peer review and monitoring concept outlined by the WCO. We also encourage all members of the international customs community to actively support and participate in this process when it commences. We must continue to support efforts to bolster integrity for years to come.

The final theme was a recognition that customs services have the clear potential to serve as an example for other areas of public administration. Customs administrations might be able to make a greater contribution to public service, especially since they have experienced and successfully dealt with problems that may be new to other agencies.

The best practice examples speak to the cutting edge approach that customs administrations are taking on this issue, and their ability to contribute to efforts that might be undertaken by other public agencies.

Beyond these themes, the participants discussed other ideas spurred by the various presentations. Delegates discussed the usefulness of a United Nations convention on corruption. The Customs workshop concluded that it fully supported the negotiation of such an instrument.

With regard to its content, participants agreed that the proposed convention must be positive in its focus and scope and give equal attention to prevention and criminalisation.

Secondly, the group asserted that the convention should focus on addressing the underlying causes of corruption. The group felt that the agreement should include an acknowledgement of the role that both the public and private sectors play in any corrupt transaction and treat each in an appropriate manner. The convention then should provide for meaningful incentives for compliance and appropriate sanctions for non-compliance.

Next, it needs to encourage co-operation between all sectors of society. The proposed convention needs to be clear and unambiguous in defining the concepts of integrity and corruption and in setting appropriate standards.

Finally, at a more detailed level, the convention must prohibit facilitation or service payments to government officers, as this is a major problem for many customs administrations.

After examining a number of strategies and approaches to fighting corruption in Customs, the workshop concluded that there are no quick or simple solutions. The problem cannot be addressed by only increasing supervision and accountability; achieving high levels of integrity in Customs required that we tackle the problem comprehensively – through proactive and reactive measures.

We therefore recommend that the following strategies be used:

- Review and rationalise legislation and administrative regulations, including provisions for appeal;
- Work towards the transparency of Customs procedures and legislation;
- Implement policies to ensure the utilisation of automation;
- Implement sound human resource management systems, including rotation and relocation of staff from high-risk working environments;
- Strengthen audit and internal investigation systems;
- Improve recruitment and selection of staff;
- Implement and promote codes of conduct and disciplinary procedures;
- Invest in the professional development of staff and cultivate a positive sense of organisational identity;
- Ensure customs officials are paid reasonable living wages and benefits; and
- Develop co-operative partnership arrangements and anti-corruption coalitions with stakeholders and the private sector.

In short, for corruption to be eliminated from Customs, governments need to focus their attention and resources on the comprehensive reform and modernisation of their customs administrations. Without such a holistic approach, attempts to eliminate corruption are likely to fail in the long term. "Quick-fix" solutions such as employing pre-shipment inspection companies to undertake some aspects of Customs work may appear attractive, but experience shows they rarely achieve their purported goals. Typically, these companies further erode the capacity of the organisations they are intended to assist.

We all know that customs administrations play a vital role in collecting government revenue, protecting the community from prohibited imports, facilitating trade, encouraging foreign investment, and contributing to national development. A trustworthy customs administration is an important national asset to everyone. Moreover, due to its high visibility and central role in the economic development of many countries, a reliable and credible customs service can demonstrate a nation's commitment to high moral principles in public administration. Indeed, it is an excellent advertisement for a nation's ability to make effective use of inward investment and development assistance funding.

Finally, we recommend that the Global Forum acknowledge the fact that national customs administrations are taking positive steps to deal with the issue of corruption, but that additional government commitment and investment are required to implement comprehensive integrity measures. Additionally, we recommend that the Forum call upon the World Customs Organisation, regional customs organisations, national customs administrations, and the private sector to consider the various conclusions of this Customs workshop when they define their further work to maintain high quality and corruption-free customs administrations.

ANNEX

BEST PRACTICE EXAMPLES

The participants at the Customs Workshop identified several examples of national, regional and international strategies that have proved particularly useful in the fight against corruption. These practices are provided as an appendix to the workshop report, as they may prove relevant to delegates from the other workshops.

National

- The Hong Kong, China experiences where a strong and co-operative partnership approach has been developed between the Customs administration and the Independent Commission Against Corruption. In addition they have developed a designated contact point arrangement to facilitate the reporting of suspicious activities.

- The United States experience where US Customs has established a strong and well-resourced Internal Affairs capacity. The Internal Affairs unit focuses considerable attention to education and prevention as well as investigation and prosecution.

- The New Zealand Experience where integrity has been addressed through the establishment of a special integrity project which resulted in the implementation of a Statement of Integrity principles, a Code of Conduct and the promotion of core integrity values amongst all officers. The NZ strategy is based on the fact that the behaviour of Customs officials, as seen by the general public, must reflect the high moral and ethical standards they expect from civil servants.

- The Netherlands example where much attention has been paid to establishing and promoting a series of basic values and rules of conduct, improving communication, promoting the concept of integrity as a shared responsibility between management and all staff and the establishment of partnerships between Customs and the private sector.

- The Senegal experience where the introduction of automated systems to handle core Customs functions has removed much of the opportunity for staff to engage in corrupt behaviour. Senegal has also introduced a number of social welfare measures designed to overcome salary limitations and improve the conditions of Customs officials. These include a Customs Mutual Insurance Company and a housing co-operative to facilitate home ownership.

- The example of China where significant attention is paid to the education of junior staff and awareness raising throughout the organisation. Specific training is provided to staff at all levels and where corruption cases have been identified they are highlighted in anti-corruption promotion campaigns. This education program is supplemented by internal and external supervision measures and the provision of positive incentives for officers who take an active role in the fight against corruption.

- The experience of the Philippines where improving integrity was a central element of a much wider comprehensive reform and modernisation project that is supported at the highest political and administrative levels. Attention was paid to re-engineering of Customs processes, securing the active involvement and support of the private sector, the need to take progressive and realistic steps, and the incorporation of automation as a key element of the program.

Regional

- The experience of the Asia Pacific Economic Co-operation (APEC) Sub Committee on Customs Procedures action plan item on integrity which has significantly raised the profile of the issue, established mechanisms for the exchange of information and experience between Members and facilitated the development of national integrity action plans.

- The experience of the Caribbean Customs Law Enforcement Council (CCLEC) which has established the Bridgetown Declaration and has provided a range of innovate strategies to assist its Member administrations to introduce practical measures to deal with the problem of corruption. These measures are of particular relevance to small administrations such as those found in the Caribbean region.

- The conduct of Regional Integrity Workshops and Best Practice Seminars by the WCO which provide an opportunity for information sharing between Customs administrations on a regional basis. Such workshops and seminars also provide a useful vehicle for establishing networks between officials charged with integrity matters and for the promotion of key integrity measures.

- The experience of Germany, Czech Republic, the Netherlands, which have combined to develop and implement a benchmarking project which is focussed on the identification of corruption prone procedures, corruption prevention measures, appropriate organisational measures, sensitising officials to integrity issues and risk management. This project which is designed to identify and develop best practices in relation to these areas is conducted under the auspices of the European Union Customs 2002 program.

International

- The experience of the WCO which has established the Arusha Declaration on Integrity in Customs and a range of practical measures to assist with the implementation of the key provisions of the declaration. The WCO approach is based on an understanding of the unique Customs operating environment and the need for solutions to be both practical and in accordance with the social, political and economic circumstances facing Member administrations. In particular, the Integrity Resource Centre, the Self Assessment Guide, the Model Code of Conduct, the conduct of national and regional integrity workshops and the recently announced Integrity Peer Review and Monitoring system are all examples of innovative approaches that have been taken at the international level.

- International co-operation can enhance through the establishment of memoranda of understanding between international organisations and between national Customs administrations. Examples that were mentioned during the seminar include those signed with a range of organisations by the ICC, FIATA, and the WCO.

REPORT

WORKSHOP 4

'CORRUPTION, TRANSITION AND DEVELOPMENT'

THE HAGUE,
MAY 31, 2001

- The recommendations in the texts are the reflections that were expressed by the experts during the workshops. They have no formal status.

Workshop IV: Corruption, Transition and Development

Workshop 4 *Corruption, Transition and Development* has been held under the auspices of the Netherlands Minister for Development Co-operation, Ms. Eveline Herfkens.
Dutch development co-operation aims to contribute to poverty reduction. International studies by the World Bank and others have shown these goals can only be attained by countries that are serious about establishing good governance.
Corruption is a symptom of bad governance: it undermines democratic values and disturbs the development priorities of a country.
Furthermore, corruption slows down sustainable economic growth by disrupting the distribution of scarce goods. Corruption exists everywhere but it does most harm in those areas where resources are already limited.
Everyone must fight corruption, in the north as well as in the south, in the east as well as in the west.

However, fighting corruption can never be an isolated policy objective. It must always be an integral part of promoting a transparent and accountable government, of promoting good governance. Preventive legislation is important but it addresses only part of the problem. Fighting corruption requires engagement at all levels, from political leaders to the man and woman in the street, from the oldest to the youngest in society. Every member of society is accountable for his or her own contribution to fighting corruption. Public authorities, the private sector and civil society should complement and reinforce one another in a concerted effort to make public resource flows more transparent. After all, public funds are intended for the development of all citizens and not just for the benefit of one group.

Workshop 4 has been a very dynamic workshop. Where the other workshops had a more focused task, the participants of Workshop IV have been addressing very different topics. Ranging from the role of the media, the role of parliaments and supreme audit institutions, regional co-operation and local government to the role of the youth. These topics were chosen from the belief that good governance is a precondition for poverty reduction. The Workshop was meant to elaborate the belief that political commitment should lead to co-operation with all actors in society. International co-operation has an essential role to play in the fight against corruption.
But with or without co-operation: each government must take its own responsibility to strive for a corruption free society.

In the end corruption boils down to two dimensions: People and opportunity.
All around the world people share the fact that corruption is human behaviour. It is not a natural disaster or a technical problem.
There is not much data available about the human drive to be corrupt, but from the available data one could draw the conclusion that about 90% of corruptive behaviour has everything to do with the opportunity to be corrupt. For instance: when employees, caught embezzling from their own employer, were interviewed about the reason for their behaviour they all gave the same explanation, namely "it was so easy": opportunity.

All eleven sub-sessions dealt with diminishing the opportunity for corruption one way or an other:

- Be it at local level (subsession 3), national level (subsession 2 and 8), supra national level (subsession 9 Europe)) or global level (subsession 11);
- Be it diminishing the opportunity under emergency rule (subsession 5 on hurricane Mitch) or building reduction of opportunity in structural strategies for sustainable development (subsession 4 of the World Bank);
- Be it diminishing the opportunity by heightening the chance of being exposed by the media (subsession 1), by public complaint (subsession 6) or by public participation and disclosure of information (subsession 7); and finally
- Diminishing the opportunity by making room for and involving youth (subsession 10).

The workshop has led to an exchange of ideas on concrete methods and best practices that would make anti-corruption efforts both more efficient and effective.

Diminishing opportunities for corruption:

3. At local level	- conducting surveys for baseline data - use of existing structures to increase capacities regarding human resource and awareness raising - accountability information, use of information technology
2. At national level	- establishing/supporting a transparent and fair election process - strengthening parliamentary work (public hearings, minority rights, oversight committees) - strengthening financial management/IT systems - setting up integrity systems
8. At national level	- issues of state capture and the undersection of the private, public and political parties should be added to the agendas; - depolitisation of civil servants
9. At supra-national level	- advantage should be taken of the wide range of already existing international instruments (e.g. the Accra Declaration of ECOWAS on Collaborating against Corruption of 22 May 2001, European criminal law and Civil law conventions) - ratification of the anti-corruption conventions should be a necessary precondition for funding - programmes should be multidisciplinary - programmes should be monitored and complemented with technical assistance
10. At global level	- closer co-operation between IPU and INTOSAI by exchange of experience - broad governance approach (cannot fight corruption just by fighting corruption) - acknowledge and adapt to local specific circumstances - though: culture is not an excuse - the poor suffer disproportionately
5. Under emergency rule	- depolitisation of legal powers by ratifying constitutional reforms, in order to stimulate transparency to society - stimulate an effective decentralisation - institutionalise control systems in the whole public sector that integrates financial management - legislative reforms regarding the immunity of high governmental officials
4. Building in reduction in structural strategies	- incentives for accountability should be strengthened by positive and negative sanctions - build institutions with good governance, access to information, audits, good public allocation management
1. By heightening chance of being exposed by media	- upgrade professionalism - change laws - free press, no governmental ownership etc. - encourage investigative journalism
6. By public complaint	- speedy handling of complaints and overcome fear of public to lodge complaints (use of whistle blowers) - independence of complaint bodies and complaint bodies with public confidence - create an independent ombudsman - create confidence in complaint systems and protect those complaining

7. By public participation and disclosure of information	- knowledge: rigorous data collection and empirical analysis - leadership in the political, civil and international arena - collective action via systematic participatory and consensus building approaches with key holders in society
11. By making room for and involving the youth	- raising awareness (by creating an issue, an image and impulse for youth involvement) - accessibility of youth to public institutions - education of youth - transparent schools - international youth platforms - instruments of enforcements and monitoring by youth

All these ideas can be grouped to 5 conclusions and recommendations:

First the hardware that will diminish the opportunity for corruption:

1. Legislative framework
   All government levels need a solid legal framework with clear rules about corruption so that it is clear what you can do and what not.
   And governments and institutions need funding and capacity for implementing the legal framework.

2. Also part of the hardware that will diminish the opportunity for Corruption is a sound public income and expenditure system and the facility of a sound financial system, with independent audit and disclosure of income and expenditure data, financial data and audit data.

3. Between hard and software is the need and therefore the urge to collect more solid data about corruption by surveys and empirical analysis.
   Try to get away from the emotions around corruption and agenda setting at all levels by collecting and analysing more solid data.
   Also: share this information with all parties (full disclosure) – and modern technology will help us – and be as transparent as possible.

4. Software: there is a united urge for co-operation and commitment at all levels – from local to global, from public to science, from institutions to ngo's.
   Especially ngo's themselves are invited to be more transparent themselves about their goals and results, about their sources of income and their expenditure, and about the effectiveness of their work.

5. And last but not least: all parties should work at raising awareness about corruption by information sharing and education.
   If the hardware fails to diminish the opportunity for corruption and people use the opportunity there should at least be a good chance for exposure. Therefore the public should be aware of their possibilities to claim and disclose, and should be protected when doing so; the press can play a mayor role by disclosing what they know, and need protection when they do; politicians could work more transparent and in close co-operation with the public.
   And for all people concerned education has an important role to play: educating the people in general but at the same time focusing on educating the youth to awareness, educating public servants, professionalising the media.

Workshop IV is convinced that to hand over a better world with less corruption and less poverty to the youth, these five priorities should be implemented.

REPORT

WORKSHOP 5

'GOVERNMENT AND THE BUSINESS SECTOR'

THE HAGUE,
MAY 31, 2001

- **The recommendations in the texts are the reflections that were expressed by the experts during the workshops. They have no formal status.**

Workshop V: Government and the business sector

Sub-session Financial Reporting, Compliance Programmes, Facilitating Payments, Globalisation.

The Workshop discussed a range of topics concerning the relations between governments and the business sector.

The OECD Convention
After hefty discussions it was formulated as follows:
"As there is a consensus on having a holistic approach to corruption, then should there be equal attention paid simultaneously to

- grand corruption
- private corruption
- petty corruption.

Consideration should be given to how petty corruption can be discouraged on the supply side by provisions in corporate codes of practice.
However it would be a retrograde step to simply regard petty corruption or 'facilitating payments' as a necessary evil to oil the wheels of international trade while subsidising the poverty line wages of minor civil servants in the developing world. Zero tolerance may not be a realistic objective in the near future, but the international community should continue to press for a bribe-free world."

By excluding the so-called petty corruption or facilitating payments from criminal sanctions probably, quite an effective loophole was constructed.
Since the OECD Convention has become effective various functionaries from major multinational companies have approached their respective Justice officials to discuss existing business practices which have become illegal. When public prosecutors beforehand would 'promise' to business officials, certified accountants, or auditors that under certain conditions such (illegal) payments would not be prosecuted, then there will be the occasion for an enormous diversity in the so-called 34 member states of the OECD Convention against Bribery (1997). This would not be a desirable state of affairs.

Business codes and professional codes
Voluntary anti-corruption codes of conduct adopted by the private sector stand on the shoulders of legal approaches, they implement legal commitments, and expand beyond current law. But for these codes of conduct to be effective and credible, they need to contain certain elements, as summarised above. Governments and non-governmental organisations can play important roles in supporting the use of such private sector approaches, through guidance as to what constitutes good codes of conduct, and input into code development and implementation.

The following emerge as essential components of effective voluntary codes of conduct:

- meaningful input of all affected stakeholders in code development
- clear, enforceable commitments, written in plain language
- explicit commitment of senior management
- internal system of accountability from the top to the bottom front-line employees
- training and participation of all employees, especially front-line workers
- incentives for positive behaviour and disincentives for negative behaviour
- removal of disincentives for positive behaviour
- whistle blowing protection needs to be provided
- hotlines and information assistance
- adequate resourcing
- public reporting
- internal and external code public awareness campaigns

Compliance programs need a compliance culture. The programs should cover the sources of corruption. There is a proper role for government even in totally private codes of behaviour or systems of compliance, as the government should provide the necessary legal framework. However, compliance is not a substitute for the legal framework.

Another point concerns the so-called vulnerable professions, such as certified accountants, auditors, tax consultants, public notaries, and lawyers. These classical independent professions are bound to general professional codes, which do not cover the risk to which they nowadays are exposed. The UN-Convention has skipped these professions and their responsibilities. But the Charter of European Associations in the support to fight organised crime does have such self-regulating provisions. His may be considered as a good practice.

Bribe creating conditions

Contracts are often to be implemented under a strict time schedule. If there is to be a strict no bribe policy, one should proceed towards standards where such penalties will not be abused.

Members in the audience stressed that the government in many a developing country not only is on the demanding side but also on the supply side since many companies are controlled by military personnel or government officials.

Also the very fact of an undocumented economy creates opportunities since firms are continuously under pressure to keep the business afloat with formal licenses: the 'informal' licenses have a higher price and are to be paid as well. The tax officials do get perhaps the most opportunities for corruption in undocumented economies. The only remedy is to 'document' such an economy.

Around development projects there should be much more information concerning the budget of such projects and there should be set up offices where contractors may appeal to decisions made (in bidding contests, for example) by the management.

Vulnerability of multinational enterprises

Multinational companies use long chains of suppliers.
In three ways multinational companies face vulnerability:

1. Companies face loss of reputation if they are caught engaged in corruptive practices. Companies fully dependent on a brand image face reputation risks, if there is exposure to criticism (human rights, children's labour and corruption).
2. A second point is the spread of operations. Small and medium size companies are more exposed to the dangers of corruption as they may rely on one or two countries abroad. In such circumstances such companies are more willing to keep the operations afloat with bribes and other illegal means in contrast to big companies with a spread of their markets in ten, fifteen or more countries.
3. It is in the interest of the employees and the company to protect whistle blowers. Disgruntled employees may otherwise go to the press and face great personal risks. Companies are better equipped against corruptive practices, if they are able to connect their internal codes of behaviour and their internal integrity system with an external recourse to the law system. Companies with a strict "no bribe" policy are less confronted with demands than the companies with large discretionary power for its country managers.

Private to private corruption

Private corruption is not covered by the OECD Convention. Particular attention should be given to privatised companies. There need to be set up a culture of relative openness in contrast to the bureaucratic climate.

In the setting of management attention to i.a. environmental issues and quality issues also the integrity issues are to be included. Management systems are to be redesigned so as to incorporate integral attention to these vulnerabilities and social responsibilities.

The role of trade unions in these matters should not be underestimated. The top ten countries on the TI-corruption Index (the cleanest countries) do have free trade unions, free speech, etc. (with one exception). The last ten or twenty countries, down the list, do not have free trade unions.

Sub-session Financial Reporting, Accountancy and Taxes

General
Maintenance of proper books of accounts, the existence of a sound system of internal control and the conduct of audits by truly independent external auditors can not by themselves prevent bribery and corruption. But their absence facilitates corrupt behaviour so that collectively they act as a deterrent and provide the basis for transparency.
If sanctions are applied in cases of bribery and corruption the evidence provided by accurate accounting records will be an essential prerequisite for successful prosecutions.

Accounting records
Minimum requirements are:
- Records kept up to date and reconciled
- All transactions to be recorded, no " off-the-book" accounts or unrecorded slush funds
- No fictitious accounts or falsified documents

An analysis of bookkeeping requirements in 16 countries, sponsored by TI and conducted by the big 5 accounting firms, showed they were frequently out of date and tax rules driven. They often do not apply to overseas affiliates or prohibit the use of " off-the-book" accounts or slush funds.

Accounting principles
To improve international comparability between companies and thereby increase transparency of business activities the use of IAS or similar high level standards is strongly recommended. This includes the appropriate disclosure of contingent liabilities in financial statements.

Sanctions
Effective proportionate and dissuasive civil administrative and criminal penalties should be applicable in case of non-compliance with the bookkeeping and accounting requirements.

External audit
Audits should be conducted of all business entities, regardless of stock exchange listing and legal structure, where:
- the business entity exceeds a certain size, and/or
- where a substantial share of the entity's business involves international transactions

Audits should be conducted in all locations in accordance with highest international standards (ISA's), including the requirements for independence.
Internal controls
Properly implemented internal controls are essential to the generation of accurate accounting records and to the safeguarding of business assets. While it is difficult to legislate the adoption of internal controls in business entities, good corporate governance, stock exchange listing requirements and professional audit rules can require business to demonstrate that adequate internal control systems are in place.
Reporting on internal controls in published annual reports and the existence of independently established audit committees can provide effective support and should be encouraged

Tax issues
Bribes paid within each country and abroad should not be allowed as deductible expenses for tax purposes. Guidance needs to be provided to tax assessment officers to help them to distinguish bribes from legitimate business promotion and retention expenses.

Sub-session: Money Laundering , Offshore Jurisdictions & the Private Financial Sector

During these sub-sessions it was agreed that corruption of Public office usually involves the exchange of public trust for money. These funds, if they are to be used by the corrupt public official or the payment made to the official, it must be concealed from the authorities and the public and made to appear legitimate. The most desirable means to make payments and bribe proceeds appear legitimate is to use the legitimate financial institutions and services that can operate efficiently in the global economy.
Corruption is more difficult if there are programs and laws that make such services less vulnerable to the facilitation (or money laundering) of corruption proceeds.

Therefore an extensive discussion took place on issues related to money laundering, the measures which have already been taken to address money laundering as well as the errors and mistakes which have been made in this area, particularly in the fight against drug money laundering. Specific topics which were discussed were inter alia, development of appropriate measures against money laundering, relevant practices developed in other areas, asset sharing, and the prevention of money laundering.

Furthermore there was discussion on offshore financial centres. This discussion focused on the work of the Basel Committee, Financial Action Task Force, and the work of the Offshore Group of Banking Supervisors. It was stressed that this term lacks definitions and that it would be more useful to consider all jurisdictions within the framework of a process for identifying compliant and non compliant jurisdictions in the application of established international standards. Especially in this area it was felt that the establishment of monitoring systems should be put in place, to monitor the formal compliance and effective implementation of international standards.

Participants looked forward to the conclusion of the UN Convention against Corruption and recommended that those charged with its elaboration ensure that:

- it contains specific and adequately detailed provisions requiring the criminalisation of the laundering of the proceeds of corruption and associated obligations for co-operation in the investigation and prosecution of the same.
- notwithstanding the complexities which present, include in appropriate form the principle that embezzled state funds be returned to countries of origin subject to appropriate protections for the rights of individuals.
- It contains detailed and robust treatment of measures to combat money laundering. In the sphere of prevention this should apply to banks, non-bank financial institutions and other bodies and professions susceptible to money laundering. It was strongly felt that in the specific context of efforts to combat corruption there was a need to go beyond the achievements which had been recorded in earlier instruments of global reach, such as the UN Convention against Transnational Organised Crime and the International Convention for the Suppression of Financing of Terrorism.

At a more general level it was felt that a high priority ought to be devoted to the financial channels of corruption by calling on international organisations, national governments and the entire private financial services sector to take all necessary steps to address this problem

In this context we recommend that the following general and specific steps be taken.

- All elements of the financial services industry should have policies and practices that address their vulnerability as facilitators of corruption. This includes not only financial institutions, but also professional financial agents such as attorneys, accountants, trustees and company formation specialists.
- Governments ensure that all bodies responsible for the regulation of financial services establish a comprehensive framework of rules and guidance that address the vulnerability of these services.
- Money laundering related to corruption including both the bribe giver and the receiver of the bribe should be made a predicate criminal offence in all jurisdictions.
- Every effort should be made to reduce impediments for financial institutions to determine the beneficial owner of accounts. This includes establishing international standards for the formation of legal entities, trustee arrangements, correspondent banking relationships, etc.

- Develop a global independent peergroup review process for evaluating effective compliance in the adoption and implementation of international standards.
- Encourage the Basel Committee on Banking Supervision and the FATF to continue their work on customer due diligence and together with other international and national efforts develop guidance on best practice to support and build upon the work to elaborate an effective international legal instrument against corruption.

Sub-sessions: solicitation and extortion (passive corruption), whistle blowing, corruption in the private sector

Solicitation and extortion (business view)
- Supply and demand side of corruption has to be addressed simultaneously, but in different ways.
- Combined action business community and governments
- OECD recommendations: broaden to corruption on the demand side
- Proposed measures
  - More awareness of seriousness of the problem
  - OECD monitoring phase II; fact finding about solicitation
  - Advise about legitimacy to give in
  - Diplomatic action

Discussion:
- Another measure: transparency of bidding process
- Exchange of information within business community

Whistle Blowing (trade union view)
Attention to whistle blowing is important because:
- Anti corruption and whistle blowing is correlated to culture of freedom of association, human rights
- Corruption is related to poverty
- Getting the rules of the game right: good governance
- Increases risk of detection
- Increases ability to prosecute

Whistle blowing is symptom of changed relationship between employer and employee
Measures to be taken:
- Need for internal systems for whistle blowing: reporting procedures, etc.
- Back up with external measures
- Advise for employees: hot lines, etc.
- Effective legislation for protection whistle blower: change of OECD-convention on this point
- Codes

Discussion:
- Costs of whistle blowing
- Fairness to company
- Repraisal and protection of employee

Private corruption (research)
- By ICC initiated research about private corruption
- Not yet ended, but some results:
  - Fact finding in business community is hampered by reluctance to give detailed information
  - Private corruption is marked as a minor problem by business community
  - Preference for self-regulation

Recommendation to OECD: Broaden scope of the convention to private corruption (in support of self-regulation).